

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: Wire Harness	Case No. 2:12-cv-00103
In Re: Instrument Panel Clusters	Case No. 2:12-cv-00203
In Re: Heater Control Panels	Case No. 2:12-cv-00403
In Re: Bearings	Case No. 2:12-cv-00503
In Re: Anti-Vibrational Rubber Parts	Case No. 2:13-cv-00803
In Re: Windshield Wipers	Case No. 2:13-cv-00903
In Re: Radiators	Case No. 2:13-cv-01003
In Re: Starters	Case No. 2:13-cv-01103
In Re: Automotive Lamps	Case No. 2:13-cv-01203
In Re: Ignition Coils	Case No. 2:13-cv-01403
In Re: HID Ballasts	Case No. 2:13-cv-01703
In Re: Electronic Powered Steering Assemblies	Case No. 2:13-cv-01903
In Re: Fan Motors	Case No. 2:13-cv-02103
In Re: Fuel Injection Systems	Case No. 2:13-cv-02203
In Re: Power Window Motors	Case No. 2:13-cv-02303
In Re: Automatic Transmission Fluid Warmers	Case No. 2:13-cv-02403
In Re: Air Conditioning Systems	Case No. 2:13-cv-02703
In Re: Windshield Washer Systems	Case No. 2:13-cv-02803
In Re: Constant Velocity Joint Boot Products	Case No. 2:14-cv-02903
In Re: Spark Plugs	Case No. 2:15-cv-03003
In Re: Shock Absorbers	Case No. 2:15-cv-03303
In Re: Body Sealing Products	Case No. 2:16-cv-03403
In Re: Interior Trim Products	Case No. 2:16-cv-03503
In Re: Automotive Brake Hoses	Case No. 2:16-cv-03603
In Re: Exhaust Systems	Case No. 2:16-cv-03703
In Re: Ceramic Substrates	Case No. 2:16-cv-03803
In Re: Automotive Steel Tubes	Case No. 2:16-cv-04003
In Re: Access Mechanisms	Case No. 2:16-cv-04103
In Re: Door Latches	Case No. 2:17-cv-11637
THIS DOCUMENT RELATES TO: END-PAYOR ACTIONS	Oral Argument Requested

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DENY  
GEICO'S EXCLUSION REQUEST AS INVALID AND INEFFECTIVE  
AND TO ENFORCE LITIGATION STAYS**

Defendants moved to deny GEICO's request for exclusion from the Round 3 settlements (the "Settlements") because the exclusion request – when read in the context of GEICO's Complaint in *GEICO, et al. v. Aisan Indus. Co., Ltd., et al.*, No. 2:18-cv-12210-MOB-MKM (E.D. Mich.) ("GEICO 3") and GEICO's briefing in *GEICO, et al. v. Autoliv, Inc., et al.*, No. 2:16-cv-13189-MOB-MKM (E.D. Mich.) ("GEICO 1") – indicated that GEICO was unconstitutionally trying to opt out possibly millions of other, unidentified Class Members so as to "step into their shoes" and press the claims of those other Class Members while also pursuing GEICO's own claims against Defendants.

GEICO now represents that it is not seeking to opt out other Class Members or to exercise purported subrogation rights to their claims. GEICO also represents that the claims it asserts in GEICO 3 are not brought as subrogee and are not otherwise derivative of the claims or injuries of other Class Members. GEICO therefore does not purport to "step into their shoes" for any purpose. In accordance with Rule 23(c)(3), the Court should enter an Order making clear that GEICO's exclusion request has not opted out any Class Members other than the GEICO entities expressly named in the exclusion request.

**I. GEICO Cannot Pursue the Claims or Rights of Other Class Members Because the Other Class Members Did Not Opt Out**

GEICO does not dispute that if it wished to "step into the shoes" of other Class Members when pursuing claims against the Round 3 Defendants, those other Class Members would need to have requested exclusion from the Settlements. *See* Mot. to Deny at 11-16, 22. Instead, GEICO unequivocally represents that it is not seeking to opt out anyone other than itself. *See*

Mot. to Intervene at 13<sup>1</sup> (“GEICO’s exclusion letter did not opt out other class members besides itself and its affiliates . . . .”); GEICO Opp. at 16<sup>2</sup> (stating that GEICO “did not—nor did it attempt—to opt out other class members.”); *id.* (“GEICO’s exclusion letter did not opt out other class members besides itself and its affiliates . . . .”); *id.* (“GEICO does not seek, and has not sought, to exclude any class members apart from itself and its affiliates.”).

GEICO further represents that the claims asserted in GEICO 3 are not based on the exercise of any subrogation rights or are otherwise derivative of the claims of other Class Members. *See* Mot. to Intervene at 13 (“GEICO’s claims asserted in its Complaint are not premised on subrogation rights.”); *id.* at 14 (“GEICO’s claims against the Round 3 Defendants . . . do not rely on a subrogation theory.”); GEICO Opp. at 14 (disavowing that GEICO sought to “anonymously opt[] out other class members in an attempt to pursue claims under the guise of subrogation rights. . . . GEICO is not doing so.”); *see also* GEICO Reply at 5, n.8<sup>3</sup> (“GEICO premises its claims on its direct injury in paying for auto parts, which are not derivative of its insureds . . . .”).

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<sup>1</sup> “Mot. to Intervene” refers to GEICO’s Motion to Intervene and Stay Final Fairness Determination, which was filed in multiple dockets. *See e.g.*, Case No. 2:13-cv-00903-MOB-MKM, ECF No. 192.

<sup>2</sup> “GEICO Opp.” refers to GEICO’s Opposition Response to Defendants’ Motion to Deny GEICO’s Exclusion Request as Invalid and Ineffective and to Enforce Litigation Stays, different but substantially similar versions of which (sometimes with different pagination and footnote numbering) were filed in multiple dockets. *See, e.g.*, Case No. 2:13-cv-00903-MOB-MKM, ECF No. 195-1. Unless otherwise noted, all references in this reply to pagination and footnote numbers in GEICO’s opposition brief refer to this version.

<sup>3</sup> “GEICO Reply” refers to GEICO’s Reply in Support of its Motion to Intervene and Stay Final Fairness Determination, which was filed in multiple dockets. *See, e.g.*, Case No. 2:13-cv-00903-MOB-MKM, ECF No. 201. Unless otherwise noted, all references in Defendants’ reply to pagination and footnote numbers in the GEICO Reply refer to this version.

But GEICO then hedges, suggesting that although it is not *now* asserting claims based on alleged subrogation rights, it might *later* assert them in some unspecified way. Specifically, footnote 21 of its opposition (footnote 18 in some versions) states:

If it is found that GEICO cannot recover for its direct injuries caused by Defendants’ unlawful conduct, GEICO also has subrogation rights. GEICO’s subrogation interest is not extinguished simply because a class member settles with Defendants.

GEICO Opp. at 19, n.21. GEICO similarly says “[a]lthough GEICO premises its claims on its direct injury in paying for auto parts, which are not derivative of its insureds, GEICO’s subrogation rights when it has made payments to insureds or claimants remain intact and prevent the release of its claims.” GEICO Reply at 5, n.8.

GEICO appears to be equivocating in an effort to reserve its ability in the future to “have its cake and eat it, too.” This Court need not decide now issues related to claims that have not yet been asserted. *See generally* Opinion and Order Regarding Defendants’ Collective Motion to Dismiss Second Amended Complaint, ECF No. 74 at 51-52, Case No. 2:16-cv-13189-MOB-MKM (assuming that GEICO would allege in amended pleadings that it had subrogation rights to cartel-related claims of other class members,<sup>4</sup> but declining to adjudicate whether GEICO’s assumed rights as a subrogee were released because GEICO had raised subrogation issues only in its briefing and not in the complaint in GEICO 1). In light of GEICO’s representations, only the validity and scope of GEICO’s request for exclusion is ripe for decision.

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<sup>4</sup> *But see* Mot. to Deny at 16-19, 20-22 (establishing that payments for covered losses under an automobile insurance policy do not create subrogation rights to the insureds’ or claimants’ antitrust and other cartel-related claims; establishing that GEICO’s policies create no such right; and establishing that GEICO cannot satisfy the “made-whole” doctrine even if it otherwise had subrogation rights to its insureds’ or claimants’ antitrust and other cartel-related claims).

## **II. Request for Relief**

Only one Class Member other than GEICO submitted an exclusion request. GEICO submitted no evidence of authority to opt out anyone other than itself. And GEICO has unequivocally disclaimed, three times, that its exclusion request seeks to opt out anyone other than itself. The Court should therefore enter an Order denying GEICO's exclusion request to the extent it sought the exclusion of anyone other than itself. If the Court determines that GEICO's failure to comply with the requirements of the Class Notice should be excused, the Court should enter an Order that provides as follows:

Excluded from the settlement classes are GEICO Corporation, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO Secure Insurance Company, and GEICO County Mutual Insurance Company ("the GEICO Entities"), and Mr. Terry Serhion. No other Class Members are excluded. To the extent that any person or entity attempts to assert the claims of other Class Members, claims that derive from the claims of other Class Members, or claims that any party contends may not be pursued in the absence of an opt out by one or more Class Members other than the GEICO Entities and Mr. Serhion, this Court retains jurisdiction to enforce the terms of the Settlements it has approved and to resolve any such disputes.

In light of GEICO's representation that its exclusion request, if granted, would not exclude any person or entity other than GEICO from the Settlements, Defendants withdraw their objections to GEICO's failure to comply with the Court-approved procedural requirements of the Class Notice and take no position on whether the Court should or should not excuse GEICO's

non-compliance. In light of GEICO's express statements that the claims asserted in the GEICO 3 Complaint do not assert subrogation-based claims and do not otherwise seek recovery for injuries that are derivative of other Class Members' injuries, and in light of the high probability that this Court's recent Order in GEICO 1 will prompt GEICO to amend its complaint in GEICO 3, there is currently no need for the Court to enforce the litigation stays ordered in the Court's Preliminary Approval Orders or to exercise its inherent powers under the All Writs Act. Defendants expressly reserve their rights to seek to enforce the Settlement Agreements and Final Judgments under the Court's continuing jurisdiction if GEICO later seeks to assert claims adjudicated in the Final Judgments entered in these actions.

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Respectfully Submitted,

/s/ Michael A. Rubin (w/consent)

James L. Cooper

Michael A. Rubin

Adam Pergament

Matthew Oster

**ARNOLD & PORTER KAYE SCHOLER LLP**

601 Massachusetts Ave., NW

Washington, DC 20001

Telephone: (202) 942-5000

james.cooper@arnoldporter.com

michael.rubin@arnoldpoerter.com

adam.pergament@arnoldporter.com

matthew.oster@arnoldporter.com

Fred K. Herrmann (P49519)

Joanne G. Swanson (33594)

**KERR, RUSSELL AND WEBER, PLC**

500 Woodward Avenue

Suite 2500

Detroit, MI 48226

Telephone: (313) 961-0200

fherrmann@kerr-russell.com

jswanson@kerr-russell.com

*Counsel for Yamashita Rubber Co., Ltd. and YUSA Corporation*

/s/ Barry A. Pupkin (w/consent)

Barry A. Pupkin  
Jeremy W. Dutra  
**SQUIRE PATTON BOGGS (US) LLP**  
2550 M Street, NW  
Washington, DC 20037  
Telephone: (202) 457-6000  
Facsimile: (202) 457-6315  
Barry.Pupkin@squirepb.com  
Jeremy.Dutra@squirepb.com

*Counsel for Defendants Aisan Industry Co., Ltd.,  
Aisan Corporation of America, Franklin Precision  
Industry, Inc., and Hyundam Industrial Co., Ltd.*

/s/ George A. Nicoud III (w/consent)

George A. Nicoud III  
Joshua D. Dick  
**GIBSON, DUNN & CRUTCHER LLP**  
555 Mission St., Ste. 3000  
San Francisco, CA 94105  
Tel: (415) 393-8200  
Fax: (415) 374-8451  
TNicoud@gibsondunn.com  
JDick@gibsondunn.com

*Counsel for ALPHA Corporation and Alpha  
Technology Corporation*

/s/ Maureen T. Taylor (w/consent)

Herbert C. Donovan (P51939)  
Maureen T. Taylor (P63547)  
**BROOKS WILKINS SHARKEY & TURCO  
PLLC**  
401 Old South Woodward, Suite 400  
Birmingham, MI 48009  
Telephone: (248) 971-1721  
Fax: (248) 971-1801  
taylor@bwst-law.com  
donovan@bwst-law.com

*And*

/s/ Anita F. Stork (w/consent)

Anita F. Stork  
**COVINGTON & BURLING LLP**  
One Front Street, 35th Floor  
San Francisco, CA, 94102  
Tel: 415-591-6000  
Fax: 415-955-6091  
Email: astork@cov.com

*Counsel for Alps Electric Co., Ltd.; Alps Electric  
(North America), Inc.; and Alps Automotive, Inc.*

/s/ John Roberti (w/consent)

John Roberti  
**ALLEN & OVERY LLP**  
1101 New York Avenue NW  
Washington, D.C. 20005  
202-683-3800  
john.roberti@allenoverly.com

Michael S. Feldberg  
**ALLEN & OVERY LLP**  
1221 Avenue of the Americas  
New York, NY 10020  
212-610-6360  
michael.feldberg@allenoverly.com

*Counsel for Defendants Robert Bosch GmbH and  
Robert Bosch LLC*

/s/ Steven A. Reiss (w/consent)

Steven A. Reiss  
Adam C. Hemlock  
Lara E. Veblen Trager  
Kaj Rozga  
**WEIL, GOTSHAL & MANGES LLP**  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
steven.reiss@weil.com  
adam.hemlock@weil.com



lara.trager@weil.com  
kaj.rozga@weil.com

*Counsel for Defendants Bridgestone Corporation  
and Bridgestone APM Company*

/s/ Steven A. Reiss (w/consent)

Steven A. Reiss  
Adam C. Hemlock  
Lara E. Veblen Trager  
**WEIL, GOTSHAL & MANGES LLP**  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
steven.reiss@weil.com  
adam.hemlock@weil.com  
lara.trager@weil.com

*Counsel for Defendants Calsonic Kansei  
Corporation and Calsonic Kansei North America,  
Inc.*

/s/ Michael Martinez (w/consent)

Michael Martinez  
Steven Kowal  
Molly K. McGinley  
Lauren Norris Donahue  
**K&L GATES LLP**  
70 W. Madison St., Suite 3100  
Chicago, IL 60602  
Phone: 312-807-4404  
Fax: 312-827-8116  
michael.martinez@klgates.com  
steven.kowal@klgates.com  
molly.mcginley@klgates.com  
lauren.donahue@klgates.com

William R. Jansen (P36688)  
Michael G. Brady (P57331)  
Amanda M. Fielder (P70180)  
**WARNER NORCROSS & JUDD LLP**  
2000 Town Center, Suite 2700  
Southfield, MI 48075-1318

Phone: 248-784-5000  
wjansen@wnj.com  
mbrady@wnj.com  
afielder@wnj.com

*Counsel for Chiyoda Manufacturing Corporation  
and Chiyoda USA Corporation*

/s/ Ronald M. McMillan (w/consent)  
John J. Eklund (OH 0010895)  
Maura L. Hughes (OH 0061929)  
Ronald M. McMillan (OH 0072437)  
Alexander B. Reich (OH 0084869)  
**CALFEE, HALTER & GRISWOLD LLP**  
The Calfee Building  
1405 East Sixth Street  
Cleveland, OH 44114-1607  
(216) 622-8200 (Phone)  
(216) 241-0816 (Fax)  
jeklund@calfee.com  
mhughes@calfee.com  
rmcmillan@calfee.com  
areich@calfee.com

Maureen T. Taylor  
Herbert C. Donovan  
**BROOKS, WILKINS, SHARKEY & TURCO  
PLLC**  
401 South Old Woodward, Suite 400  
Birmingham, MI 48009  
(248) 971-1800 (Phone)  
(248) 971-1801 (Fax)  
taylor@bwst-law.com  
donovan@bwst-law.com

*Attorneys for Defendant Continental Automotive  
Systems, Inc., Continental Automotive Electronics,  
LLC, and Continental Automotive Korea Ltd.*

/s/ Abram J. Ellis (w/consent)  
Abram J. Ellis  
**SIMPSON THACHER & BARTLETT LLP**  
900 G Street NW  
Washington, DC 20001

Telephone: 202-636-5500  
aellis@stblaw.com

George S. Wang  
Shannon K. McGovern  
**SIMPSON THACHER & BARTLETT LLP**  
425 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 455-2000  
gwang@stblaw.com  
smcgovern@stblaw.com

*Counsel for Defendants Diamond Electric Mfg. Co.,  
Ltd. and Diamond Electric Mfg. Corp.*

/s/ Michael F. Tubach (w/consent)

Michael F. Tubach  
**O'MELVENY & MYERS LLP**  
Two Embarcadero Center  
28th Floor  
San Francisco, CA 94111  
Telephone: (415) 984-8876  
Facsimile: (415) 984-8701  
mtubach@omm.com

*Counsel for Defendants Eberspächer Exhaust  
Technology GmbH & Co. KG, Eberspächer North  
America, Inc., MAHLE Behr GmbH & Co. KG, and  
MAHLE Behr USA Inc.*

/s/ Howard B. Iwrey (w/consent)

Howard B. Iwrey (P39635)  
Cale A. Johnson (P78032)  
Cody D. Rockey (P78653)  
**DYKEMA GOSSETT PLLC**  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304  
Tel: (248) 203-0700  
Fax: (248) 203-0763  
hiwrey@dykema.com  
cjohnson@dykema.com  
crockey@dykema.com

Jeremy J. Calsyn

Tara L. Tavernia  
**CLEARY GOTTlieb STEEN & HAMILTON  
LLP**

2000 Pennsylvania Avenue, NW  
Washington, DC 20006  
(202) 974-1500 (Phone)  
(202) 974-1999 (Facsimile)  
jcalsyn@cgsh.com  
ttavernia@cgsh.com

*Counsel for Faurecia Abgastechnik GmbH,  
Faurecia Systèmes d'Échappement, Faurecia  
Emissions Control Technologies, USA, LLC and  
Faurecia Emissions Control Systems, N.A., LLC*

/s/ Craig S. Seebald (w/consent)

Craig S. Seebald  
Alden L. Atkins  
Lindsey Vaala  
Ryan Will  
**VINSON & ELKINS LLP**  
2200 Pennsylvania Ave., NW  
Suite 500 – West  
Washington, DC 20037  
(202) 639-6500 (Telephone)  
(202) 879-8995 (Facsimile)  
cseebald@velaw.com  
aatkins@velaw.com  
lvaala@velaw.com  
rwill@velaw.com

*Attorneys for Hitachi Automotive Systems, Ltd.*

/s/ A. Paul Victor (w/consent)

A. Paul Victor  
Jeffrey L. Kessler  
David Greenspan  
James F. Lerner  
Elizabeth A. Cate  
**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, NY 10166  
(212) 294-4616  
PVictor@winston.com

JKessler@winston.com  
DGreenspan@winston.com  
JLerner@winston.com  
ECate@winston.com

*Attorneys for Defendants Hitachi Metals, Ltd.,  
Hitachi Cable America Inc.,  
and Hitachi Metals America, Ltd.*

/s/ Howard B. Iwrey (w/consent)

Howard B. Iwrey (P39635)  
Cale A. Johnson (P78032)  
Cody D. Rockey (P78653)  
**DYKEMA GOSSETT PLLC**  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304  
Tel: (248) 203-0700  
Fax: (248) 203-0763  
hiwrey@dykema.com  
cjohnson@dykema.com  
crockey@dykema.com

*Counsel for INOAC Corporation, INOAC Group  
North America, LLC, and INOAC USA Inc.*

/s/ Heather P. Lamberg (w/consent)

Heather P. Lamberg  
Keith R. Palfin  
**WINSTON & STRAWN LLP**  
1700 K Street, N.W.  
Washington, DC 20006  
Phone: (202) 228-5000  
Fax: (202) 202-5100  
HLamberg@winston.com  
KPalfin@winston.com

Cristina M. Fernandez  
**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, NY 10166  
Phone: (212) 294-6700  
Fax: (212) 294-4700  
CFernandez@winston.com

*Attorneys for Defendants JTEKT Corporation,  
JTEKT Automotive North America, Inc., and  
JTEKT North America Corp., formerly  
d/b/a Koyo Corporation of U.S.A.*

/s/ Sheldon H. Klein (w/consent)

Sheldon H. Klein (P41062)

**BUTZEL LONG**

41000 Woodward Avenue

Stoneridge West

Bloomfield Hills, MI 48304

248-258-1414

klein@butzel.com

Richard S. Snyder, Sr.

Freshfields Bruckhaus Deringer US LLP

700 13th Street, NW

10th Floor

Washington, DC 20005

202-777-4565

Richard.snyder@freshfields.com

*Attorneys for Kiekert AG and Kiekert USA Inc.*

/s/ Franklin R. Liss (w/consent)

Franklin R. Liss

Matthew Tabas

Emily J. Blackburn

**ARNOLD & PORTER KAYE SCHOLER LLP**

601 Massachusetts Avenue NW

Washington, DC 20001

Tel: (202) 942-5000

Fax: (202) 942-5999

frank.liss@arnoldporter.com

matthew.tabas@arnoldporter.com

emily.blackburn@arnoldporter.com

/s/ Howard B. Iwrey (w/consent)

Howard B. Iwrey (P39635)

Brian M. Moore (P58584)

**DYKEMA GOSSETT PLLC**

39577 Woodward Ave., Suite 300

Bloomfield Hills, MI 48304

Tel: (248) 203-0700

Fax: (248) 203-0763  
hiwrey@dykema.com  
bmoore@dykema.com

Counsel for Defendants Koito Manufacturing Co.,  
Ltd. and North American Lighting, Inc.

/s/ George A. Nicoud III (w/consent)

George A. Nicoud III  
Rachel S. Brass  
**GIBSON, DUNN & CRUTCHER LLP**  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Tel: (415) 393-8200  
TNicoud@gibsondunn.com  
RBrass@gibsondunn.com

Michael R. Dezsi  
**DETTMER & DEZSI PLLC**  
615 Griswold Street, Suite 1600  
Detroit, Michigan 48226  
Tel: (313) 879-1206  
mdezsi@Dezsilaw.com

*Counsel for Defendants MITSUBA Corporation and  
American Mitsuba Corporation*

/s/ Kenneth R. Davis II (w/consent)

Kenneth R. Davis II  
Darin M. Sands  
Masayuki Yamaguchi  
Peter D. Hawkes  
Hans N. Huggler  
**LANE POWELL PC**  
MODA Tower  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
Telephone: 503.778.2100  
bachmanc@lanepowell.com  
davisk@lanepowell.com  
sandsd@lanepowell.com  
yamaguchim@lanepowell.com  
hawkesp@lanepowell.com  
hugglerh@lanepowell.com

Larry S. Gangnes  
Heidi B. Bradley  
**LANE POWELL PC**  
U.S. Bank Centre  
1420 Fifth Avenue, Suite 4200  
PO Box 91302  
Seattle, WA 98111-9402  
Telephone: 206.223.7000  
gangnesl@lanepowell.com  
bradleyh@lanepowell.com

Richard D. Bisio (P30246)  
Ronald S. Nixon (P57117)  
**KEMP KLEIN LAW FIRM**  
201 West Big Beaver, Suite 600  
Troy, MI 48084  
Telephone: 248.528.1111  
richard.bisio@kkue.com  
ron.nixon@kkue.com

*Attorneys for Defendants Nachi-Fujikoshi Corp.  
and Nachi America Inc.*

/s/ Stefan M. Meisner (w/consent)  
Stefan M. Meisner (DC Bar No. 467886)  
Daniel G. Powers (DC Bar No. 997749)  
Emre N. Ilter (DC Bar No. 984479)  
Lisa A. Peterson (DC Bar No. 1020986)  
**McDERMOTT WILL & EMERY, LLP**  
The McDermott Building  
500 North Capitol Street, N.W.  
Washington, DC 20001  
Telephone: (202) 756-8000  
Facsimile: (202) 756-8087  
smeisner@mwe.com  
dgpowers@mwe.com  
eilter@mwe.com  
lpeterson@mwe.com

James C. Thomas (P23801)  
**O'REILLY RANCILIO, P.C.**  
12900 Hall Road, Suite 350  
Sterling Heights, MI 48313  
586-726-1000



jthomas@orlaw.com

*Counsel for NGK Insulators, Ltd. and  
NGK Automotive Ceramics USA, Inc.*

/s/ John M. Majoras (w/consent)

John M. Majoras

**JONES DAY**

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

Tel: (202) 879-7652

jmajoras@jonesday.com

Eric P. Enson

**JONES DAY**

555 South Flower St., 50th Floor

Los Angeles, CA 90071

Tel: (213) 489-3939

epenson@jonesday.com

Stephen J. Squeri

**JONES DAY**

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Tel: (216) 586-7237

sjsqueri@jonesday.com

Ellen L. Maxwell-Hoffman

**BOWLES RICE LLP**

600 Quarrier Street

Charleston, WV 25301

Tel: (304) 347-1186

emaxwell@bowlesrice.com

*Attorneys for Defendants NGK Spark Plug Co.,  
Ltd. and NGK Spark Plugs (U.S.A.), Inc.*

/s/ Howard B. Iwrey (w/consent)

Howard B. Iwrey (P39635)

**DYKEMA GOSSETT PLLC**

39577 Woodward Avenue

Bloomfield Hills, Michigan 48304

Tel: (248) 203-0526

hiwrey@dykema.com

*And*

/s/ Rachel J. Adcox (w/consent)

Rachel J. Adcox  
**AXINN**  
950 F Street NW  
Washington, DC 20004  
(202) 721-5406  
radcox@axinn.com

John M. Tanski  
90 State House Square, 9th Fl.  
Hartford, CT 06103  
(860) 275-8175  
jtanski@axinn.com

Nicholas E.O. Gaglio  
114 West 47th Street  
New York, NY 10036  
(212) 728-2228  
ngaglio@axinn.com

*Counsel for Nishikawa Rubber Co. Ltd.*

/s/ Millicent Lundburg (w/consent)

J. David Rowe  
Millicent Lundburg  
**DUBOIS, BRYANT & CAMPBELL, LLP**  
Colorado Tower  
303 Colorado, Suite 2300  
Austin, Texas 78701  
(512) 457-8000  
(512) 457-8008 (fax)  
drowe@dbcllp.com  
mlundburg@dbcllp.com

*Attorneys for Defendants Sanden Automotive  
Components Corp.; Sanden Automotive Climate  
Systems Corp.; and Sanden International (USA),  
Inc.*

/s/ Debra H. Dermody (w/consent)

Debra H. Dermody  
Michelle A. Mantine

**REED SMITH LLP**

225 Fifth Avenue  
Pittsburgh, PA 15222  
Tel: (412) 288-3302/4268  
Fax: (412) 288-3063  
ddermody@reedsmith.com  
mmantine@reedsmith.com

*And*

/s/ Howard B. Iwrey (w/consent)

Howard B. Iwrey (P39635)  
Brian M. Moore (P58584)  
**DYKEMA GOSSETT PLLC**  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304  
Tel: (248) 203-0526  
Fax: (248) 203-0763  
hiwrey@dykema.com  
bmoore@dykema.com

*Counsel for Defendant SKF USA Inc.*

/s/ Abram J. Ellis (w/consent)

Abram J. Ellis  
**SIMPSON THACHER & BARTLETT LLP**  
900 G Street NW  
Washington, DC 20001  
Telephone: 202-636-5500  
aellis@stblaw.com

George S. Wang  
Shannon K. McGovern  
**SIMPSON THACHER & BARTLETT LLP**  
425 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 455-2000  
gwang@stblaw.com  
smcgovern@stblaw.com

*Counsel for Defendants Stanley Electric Co., Ltd.,  
Stanley Electric U.S. Co., Inc., and II Stanley Co.,  
Inc.*

/s/ James H. Mutchnik (w/consent)

James H. Mutchnik  
**KIRKLAND & ELLIS LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2350  
james.mutchnik@kirkland.com

Eliot A. Adelson  
**KIRKLAND & ELLIS LLP**  
555 California Street  
San Francisco, California 94104  
Telephone: (415) 439-1413  
Facsimile: (415) 439-1313  
eliot.adelson@kirkland.com

Catie Ventura  
**KIRKLAND & ELLIS LLP**  
655 Fifteenth Street, N.W  
Washington, D.C. 20005-5793  
Telephone: (202) 879-5907  
Facsimile: (202) 879-5200  
catie.ventura@kirkland.com

Joanne Geha Swanson  
Fred K. Herrmann  
**KERR, RUSSELL AND WEBER, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
Telephone: (313) 961-0200  
Fax: (313) 961-0388  
Email: jswanson@kerr-russell.com  
fherrmann@kerr-russell.com

*Counsel for Tenneco Inc.; Tenneco Automotive  
Operating Co., Inc.; and Tenneco GmbH*

/s/ David C. Giardina

David C. Giardina  
Kevin M. Fee  
**SIDLEY AUSTIN LLP**  
One South Dearborn Street  
Chicago, IL 60603  
312-853-7000  
dgiardina@sidley.com

kfee@sidley.com

*And*

/s/ Bradley J. Schram

Bradley J. Schram

MI Bar # P26337

**HERTZ SCHRAM PC**

1760 S. Telegraph Road

Suite 3000

Bloomfield Hills, MI 48302

Tel.: (248) 335-5000

Fax: (248) 335-3346

bschram@hertzschrampc.com

*Attorneys for Defendants Toyo Tire & Rubber Co.,  
Ltd., Toyo Automotive Parts (USA), Inc., and  
Toyo Tire North America OE Sales LLC*

/s/ Thomas G. McNeill (w/consent)

Thomas G. McNeill (P36859)

L. Pahl Zinn (P57516)

Max A. Aidenbaum (P78793)

**DICKINSON WRIGHT PLLC**

500 Woodward Avenue, Ste 4000

Detroit, Michigan 48226

313.223.3500

tmcneill@dickinsonwright.com

pzinn@dickinsonwright.com

maidenbaum@dickinsonwright.com

*Attorneys for Usui Kokusai Sangyo Kaisha, Ltd.  
and Usui International Corporation*

/s/ Brian Byrne (w/consent)

Brian Byrne

**CLEARY GOTTlieb STEEN & HAMILTON  
LLP**

2000 Pennsylvania Ave., NW

Washington, DC 20006

Telephone: (202) 974-1850

Facsimile: (202) 974-1999

bbyrne@cgsh.com

*Attorney for Valeo S.A.*

/s/ Donald M. Barnes (w/consent)

Donald M. Barnes

Molly S. Crabtree

Ryan L. Graham

**PORTER WRIGHT MORRIS & ARTHUR LLP**

1900 K Street, NW, Suite 1110

Washington, D.C. 20006

(202) 778-3000

(202) 778-3063 (fax)

dbarnes@porterwright.com

mcrabtree@porterwright.com

rgraham@porterwright.com

*Attorneys for Defendants Yamada Manufacturing  
Co., Ltd. and Yamada North America, Inc.*

**CERTIFICATE OF SERVICE**

On this 10th Day of September 2018, the undersigned caused a copy of the foregoing Reply In Support Of Defendants' Motion To Deny Geico's Exclusion Request As Invalid And Ineffective And To Enforce Litigation Stays to be served on all ECF participants via the Court's ECF system.

In addition, on this 10th Day of September 2018, attorney George A. Nicoud III of the law firm of Gibson, Dunn & Crutcher LLP caused a copy of the foregoing to be served by both electronic mail and First Class, U.S. Mail on the following non-ECF participant:

Diane Hazel  
Lewis Roca Rothgerber Christie LLP  
1200 17th Street, Suite 3000  
Denver, Colorado 80202-5855  
dhazel@lrrc.com

*Counsel for GEICO Corporation and Its Affiliates*

/s/ David C. Giardina